

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND  
FOR MANATEE COUNTY FLORIDA

STATE OF FLORIDA, :  
 :  
 Plaintiff, :  
 :  
 Vs. : CASE NO. 41 2005 CT 005586  
 :  
 ISMAEL ALMARAZ ET. AL., :  
 :  
 Defendant. :  
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**ORDER DIRECTING CLERK TO ISSUE SUBPOENA DUCES TECUM**

THIS CAUSE having come before the Court on the Defendants' Motion for Issuance of Subpoena Duces Tecum, and the Court being fully advised herein, finds as follows:

1. The Defendant in this cause was arrested and charged with DUI, including Driving with an Unlawful Breath Alcohol Level (DUBAL).
2. Following the Defendant's arrest, she submitted to a breath test on an Intoxilyzer 5000.
3. The Defendant is seeking production of the Source Code for the EPROM (version 900.08 and 900.10) located on the Intoxilyzer 5000.
4. The defendants have established that the source code is material to their theory of defense in these cases. The defendants have established through expert testimony that the source code is reasonably necessary to determine whether the

Intoxilyzer in fact contains the software approved by the State of Florida, whether it is functioning as per the approved source code and whether any alterations have affected its operation or reliability

5. On November 25, 2002 CMI, Inc., a Kentucky Corporation, (Hereinafter CMI) registered with the Florida Secretary of State to transact business in the State of Florida using the name "CMI Inc of Kentucky", with the stated purpose to sell breath alcohol testing equipment.

6. CMI since 2002 has filed annual reports with the Florida Secretary of State to continue transacting business in the State of Florida, the most recent filing occurring on February 23, 2007.

7. CMI, not only registered to transact business in the State of Florida, but actually did transact business in State of Florida by selling breath alcohol testing equipment.

8. As a foreign corporation registered to transact business in the State of Florida, CMI is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic corporation of like character. §607.1505(2), Florida Statutes.

9. Any corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers, or distributors to any person, firm, or corporation in this state is

**conclusively presumed** to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business or business venture in this state. §48.181(3), Florida Statutes.

10. This Court has jurisdiction to issue a subpoena duces tecum to CMI, a foreign corporation registered to transact business in the State of Florida.

11. A subpoena duces tecum served upon the Florida registered agent of CMI properly requires production not only of those documents located within the State of Florida, but those documents located outside Florida. *General Motors Corp. v. State*, 357 So.2d 1045 (Fla. 1978).

12. The Defendant is entitled to the issuance of a subpoena duces tecum directed to a foreign corporation to produce the source code upon a sufficient showing of materiality. *State v. Jugov*, Case no. 2005 CF 11805 NC (Sarasota Cty. Cir. Ct. 2006).

13. Based upon the testimony presented to this Court on April 11, 2006, the defendants have established that the source code is material to their theory of defense in this case.


IT IS, THEREFORE, ORDERED AND ADJUDGED:

The Defendant's Motion for issuance of a subpoena duces tecum is granted. The Clerk of Court will issue a subpoena duces tecum to CMI to produce the

Source Code for the EPROMs (900.08 and 900.10) located on the Intoxilyzer 5000  
in substantially the same form as the attached subpoena.

DONE AND ORDERED in chambers in Manatee County, Florida, this

26<sup>th</sup> day of December, 2007.

s/ 

Honorable Mark Singer  
County Court Judge

cc: Robert N. Harrison, Esquire  
Erica Arend, Assistant State Attorney